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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220934
Party	Plaintiff Marvell International Ltd.
Correspondence Address	ELIZABETH E BRECKMAN FISH & RICHARDSON PC PO BOX 1022 MINNEAPOLIS, MN 55440-1022 UNITED STATES tmdoctc@fr.com, cqs@fr.com, lmm@fr.com, nll@fr.com, martens@fr.com, hickey@fr.com, ly@fr.com, sandberg@fr.com
Submission	Motion to Strike
Filer's Name	Nancy L. Ly
Filer's e-mail	ly@fr.com, lmm@fr.com, enh@fr.com, tmdoctc@fr.com, morris@fr.com
Signature	/Nancy L. Ly/
Date	05/11/2015
Attachments	2015-05-11 Motion to Strike Answer.pdf(165343 bytes) 2015-05-11 Declaration of NLLy.pdf(157664 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 86/286,805
Filed on May 20, 2014
For the mark **A ARMADA & Design**
Published in the *Official Gazette* on November 4, 2014

MARVELL INTERNATIONAL LTD.

Opposer,

v.

ARMADA USA LLC,

Applicant.

Opposition No.: 91-220,934

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

**OPPOSER'S MOTION TO STRIKE APPLICANT'S ANSWER FOR FAILURE TO
COMPLY WITH FED. R. CIV. P. 5(b) & 8(b) and 37 C.F.R. §§ 2.106(b)(1) & 2.119(b)**

Opposer Marvell International Ltd. ("Opposer") respectfully moves this Trademark Trial and Appeal Board (the "Board") to strike the document submitted by Armada USA LLC ("Applicant") as its purported "answer" to Opposer's Notice of Opposition for (1) failing to properly serve the document upon Opposer under the Federal Rules of Civil Procedure and the Trademark Rules of Practice and (2) for failing to comply with the pleading requirements of the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

I. Applicant's Purported Answer Should be Stricken for Failure to Properly Serve Opposer under Fed. R. Civ. P. 5(b) and 37 C.F.R. § 2.119(b).

Applicant's submission of its purported answer with the Board, and e-mail to counsel for Opposer with a copy of its purported answer, on April 14, 2015 does not constitute proper service under Federal Rule of Civil Procedure 5(b) and Trademark Rule of Practice 2.119 and should be stricken. The Board's Order dated March 6, 2015 provides that "[t]he answer, and **all** other filings in this proceeding, **must** be served in a manner specified in Trademark Rule 2.119(b), and **must** include proof of service." (emphasis original).

Applicant filed its purported answer with the Board on April 14, 2015 and, on the same day, e-mailed counsel for Opposer a copy of its purported answer. Applicant alleges in its Certificate of Service that a copy of its purported answer was served via e-mail and prepaid international courier on April 12, 2015. This, however, is inaccurate. Applicant, by its representative, Mr. Waleed Sadek, did not send a copy of Applicant's "answer" via e-mail until two days after the alleged service date – April 14, 2015. A copy of Applicant's e-mail dated April 14, 2015 forwarding a copy of Applicant's "answer," is attached as **Exhibit A** to the Declaration of Nancy L. Ly ("Ly Decl."). Opposer has not agreed to accept service via electronic transmission in this proceeding. In the Certificate of Service submitted with Applicant's response to Opposer's Notice of Opposition, it also alleges that a copy was mailed to counsel for Opposer at address P.O. Box 1022, Minneapolis, MN 55440-1022. To date, a copy of Applicant's response as allegedly sent via prepaid international courier to counsel for Opposer's Minneapolis office has yet to be received. Ly Decl. ¶ 3.

Applicant submitted yet another Certificate of Service with the Board on April 16, 2015 alleging that a copy of Applicant's response was e-mailed to counsel for Opposer and sent via pre-paid international courier to the address 12390 El Camino Real, San Diego, CA 92130 on

April 12, 2015. This, too, is also inaccurate. As explained herein, Applicant's representative did not e-mail counsel for Opposer until April 14, 2015. Moreover, to date, a copy of Applicant's response as allegedly sent to counsel for Opposer also has yet to be received by counsel for Opposer at their San Diego office. Ly Decl. ¶ 4.

As this Board is well aware, filing of its document with the Board on April 14, 2015 also does not constitute effective service, as it is not a method of service provided for under Trademark Rule of Practice 2.119. *See* Fed. R. Civ. P. 5(b) and 37 C.F.R. § 2.119 (acceptable methods of service include in-person service, service via mail, or service electronic transmission when mutually agreed upon by the parties). Applicant's e-mail to counsel for Opposer on April 14, 2015 also does not constitute as effective service as Opposer and Applicant have not agreed to accept service via electronic transmission in this proceeding. Ly Decl. ¶ 5.

As Applicant failed to properly serve its purported answer upon Opposer, Opposer respectfully requests that Applicant's purported answer as filed with the Board on April 14, 2015 be stricken.

B. Applicant's "Answer" Also Should be Stricken for Failure to Comply with Federal Rule of Civil Procedure 8(b) and 37 C.F.R. § 2.106(b)(1).

In addition to Applicant's failure to properly serve Opposer with its purported answer, the Board should strike the entirety of Applicant's purported answer because it does not comply with the Federal Rules of Civil Procedure and Trademark Rules of Practice.

In responding to a pleading, a party must state in short and plain terms its defenses to each claim asserted against it and admit or deny the allegations asserted against it by an opposing party. *See* Fed. R. Civ. P. 8(b); *see also* 37 C.F.R. 2.106(b)(1) ("An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information

sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure.”).

As is evident by the face of the document, Applicant’s purported answer fails to admit or deny each of the allegations set forth in each paragraph of Opposer’s Notice of Opposition and, instead, appears to argue the merits of the opposition. This is improper and does not satisfy the requirements of Fed. R. Civ. P. 8(b) and Trademark Rule of Practice 2.106(b)(1). *See Thrifty Corp. v. Bomax Enters.*, 228 U.S.P.Q. 62, 63 (T.T.A.B. 1985) (“[T]he Board cannot accept applicant’s putative answer since a reading thereof reveals that [it] is basically argumentative rather than a proper responsive pleading to the notice of opposition. As such, it plainly does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, which is made applicable to this proceeding by Trademark Rule 2.116(a).”). When the Board has been confronted with an improper non-responsive pleading contrary to Rule 8(b) of the Federal Rules of Civil Procedure, the Board has ordered that the applicant file an answer to the notice of opposition that complies with Rule 8(b). *See Id.*; *see also Evenpro Marketing Group Inc. v. Otero*, Opp. No. 91-153,725, 2005 WL 80440, at *1 (T.T.A.B. Jan. 6, 2005) (ordering applicant to re-file answer to comply with Fed. R. Civ. P. 8(b) as “answer” was “directed towards the merits of opposer’s arguments, rather than a statement of applicant’s defenses to the claims asserted in the notice of opposition”).

In light of the foregoing, Opposer respectfully requests that the Board strike Applicant’s purported answer for failing to properly serve Opposer and for failure to comply with the Federal Rules of Civil Procedure and Trademark Rules of Practice.

Respectfully Submitted,

Dated: May 11, 2015

/s/ Nancy L. Ly

Lisa M. Martens
Erin M. Hickey
Nancy L. Ly
FISH & RICHARDSON P.C.
P.O. Box 1022
Minneapolis, MN 55440-1022
Telephone: (858) 678-5070
Facsimile: (858) 678-5099
E-mail: tmdoctc@fr.com, martens@fr.com,
hickey@fr.com, ly@fr.com, zuercher@fr.com

Attorneys for Marvell International Ltd.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has this 11th day of May 2015, been mailed by pre-paid overnight courier via Federal Express to the below-identified representative for Applicant at the correspondence address provided to the Board:

Mr. Waleed Sadek
ARMADA USA LLC
Building 86, Flat 26 Gardens, Jebel Ali
Dubai 643877
UNITED ARAB EMIRATES

/s/ April R. Morris

April R. Morris

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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DECLARATION OF NANCY L. LY, ESQ.

I, Nancy L. Ly, hereby declare and state as follows:

1. I am an Associate with the law firm of Fish & Richardson P.C., which represents Opposer Marvell International Ltd. ("Opposer") in this proceeding. I am licensed to practice law in the state of California, and am authorized to practice before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office. I have personal knowledge of the facts stated in this declaration and can and would testify truthfully thereto if called upon to do so.

2. Annexed hereto as **Exhibit A** is a true and correct copy of the e-mail correspondence dated April 14, 2015 as received from Applicant's representative attaching a copy of Applicant's response to Opposer's Notice of Opposition.

3. I understand that all correspondence sent to address P.O. Box 1022, Minneapolis, MN 55440-1022 is received and processed through Fish & Richardson's Minneapolis office. When correspondence is received and processed, Fish & Richardson staff will log the date of the

post-mark on the envelope as the document date and also note the date that the envelope was received. I also understand that, to date, no correspondence from Applicant or Applicant's representative, Mr. Waleed Sadeek, has been received by Fish & Richardson's Minneapolis office.

4. I understand that all correspondence received by Fish & Richardson's office in San Diego that was sent from an international address is logged. As Applicant's correspondence address provides that Applicant and Applicant's representative is located in the United Arab Emirates, correspondence from Applicant or Applicant's representative would have been logged. I understand that, to date, no correspondence from Applicant or Applicant's representative, has been received by Fish & Richardson's San Diego office.

5. The parties have not mutually agreed to accept service of the answer and all other filings in this proceeding via electronic transmission.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my personal knowledge and understanding.

Respectfully Submitted,

Dated: May 11, 2015

/s/ Nancy L. Ly
Nancy L. Ly

Attorney for Opposer,
MARVELL INTERNATIONAL LTD.

EXHIBIT A

Nancy Ly

From: Waleed Sadek <waleed.sadek@gmail.com>
Sent: Tuesday, April 14, 2015 4:52 AM
To: Nancy Ly
Cc: Lisa Martens; Carolyn Sandberg; April R. Morris; APS Outgoing; tmdoctc; Carolyn Sandberg; Lisa Martens; Nancy Ly; Erin Hickey; Carolyn Sandberg
Subject: Armada USA LLC's Trademark Application - Response to opposition
Attachments: Annex 1 - Application .pdf; Annex 2 - Search result.pdf; Annex 3 - ARMADA TM.pdf; Response to opposition - A ARMADA.pdf

Dear All,

Hope this note finds you well.

Please find the attached response to the opposition submitted by you.

Another copy was sent to you by mail,

I hope that covers all of your concerns.

Should you need any clarifications, please don't hesitate to contact me.

Regards,

Waleed Sadek

+971566582877